

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHRIS ELROY LOVELESS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-22-00994-JD
	)	
STATE OF OKLAHOMA, et al.,	)	
	)	
Respondents.	)	

**ORDER**

Before the Court is United States Magistrate Judge Gary M. Purcell’s Report and Recommendation [Doc. No. 5] recommending that Petitioner’s Application for Leave to Proceed *in forma pauperis* [Doc. No. 2] be denied and that the petition be dismissed without prejudice unless Petitioner paid the full filing fee to the Clerk of Court by December 8, 2022. [Doc. No. 5 at 2]. Judge Purcell advised Petitioner of his right to object to the Report and Recommendation by December 8, 2022, and that failure to timely object to the Report and Recommendation waives the right to appellate review of the recommended ruling. [*Id.*]. See also 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

The record reflects that Petitioner neither paid the full filing fee nor filed an objection to the Report and Recommendation by the deadline or requested an extension of time to do so.

The Court therefore **ACCEPTS** the Report and Recommendation [Doc. No. 5] in its entirety for the reasons stated therein. See Fed. R. Civ. P. 72(b)(3). The Court **DENIES** Petitioner’s Application for Leave to Proceed *in forma pauperis* [Doc. No. 2],

and **DISMISSES** this action **WITHOUT PREJUDICE** to refiling.<sup>1</sup>

In federal habeas actions, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant, which includes a dismissal of the action. To obtain a certificate of appealability, Petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Petitioner can satisfy this standard by demonstrating that jurists of reason could debate whether the petition should have been resolved in a different manner or that the issues presented are adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Winn v. Cook*, 945 F.3d 1253, 1257 (10th Cir. 2019) (petitioner is not entitled to a certificate of appealability “if no reasonable jurist would find it debatable” that his petition fails to state a valid constitutional claim or is procedurally barred).

After considering this Order, the Report and Recommendation, and the record, the Court finds that reasonable jurists could not debate the Court’s acceptance of the Report and Recommendation and determination that Petitioner’s habeas petition is subject to dismissal without prejudice to refiling. Consequently, the Court denies a certificate of appealability.

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<sup>1</sup> The Court notes that Petitioner has not pursued or prosecuted this action since he filed it in November 2022, and since Judge Purcell issued the Report and Recommendation. It further appears that the relief Petitioner sought (release from pretrial detention) is no longer at issue based upon review of his criminal docket in the District Court of Grady County (CF-2022-00165), of which the Court takes judicial notice through the Oklahoma State Courts Network ([www.oscn.net](http://www.oscn.net) (last accessed Mar. 29, 2023)), and which indicates he posted bond and is on order of release.

IT IS SO ORDERED this 30th day of March 2023.

A handwritten signature in black ink, appearing to read "Jodi W. Dishman", written over a horizontal line.

JODI W. DISHMAN  
UNITED STATES DISTRICT JUDGE